SUPREME COURT OF THE UNITED STATES.

Nos. 729 and 730.—October Term, 1932.

Daniel W. O'Donoghue, *vs.* The United States. William Hitz, *vs.* The United States.	On Certificates from the Court of Claims.

[May 29, 1933.]

The Chief Justice, Mr. Justice Van Devanter, and Mr. Justice Cardozo, dissenting: We are of the opinion that the courts of the District of Columbia, as this court has repeatedly declared, are not courts established under section 1 of Article III of the Constitution, but are established under the broad authority conferred upon the Congress for the government of the District of Columbia by paragraph 17 of section 8 of Article I. Hence, the limitations imposed by section 1 of Article III, with respect to tenure and compensation, are not applicable to judges of these courts. The special authority conferred for the government of the District of Columbia necessarily includes the power to establish courts deemed to be appropriate for the District (*Kendall* v. *United States*, 12 Pet. 524, 619), including the power to fix and alter tenure and compensation. It is a power complete in itself and derives nothing from section 1 of Article III. It is a power not less complete, but essentially the same as that which is conferred upon the Congress for the government of territories. *American Insurance Co.* v. *Canter*, 1 Pet. 511, 546; *McAllister* v. *United States*, 141 U. S. 174. It is not a dual power in the sense that it is derived from two sources, that is, both from Article III and also from the constitutional provision for the government of the District, but is dual only in the sense that the latter provision confers an authority so broad that it enables the Congress to invest the courts of the District not only with jurisdiction and powers analogous to those of federal courts within the States but also with jurisdiction and

powers analogous to those which States may vest in their own courts. As the courts of the District do not rest for their creation on section 1 of Article III, that creation is not subject to any of the limitations of that provision. Nor would those limitations, if considered to be applicable, be susceptible of division so that some might be deemed obligatory and others might be ignored. If the limitations relating to courts established under section 1 of Article III applied to the courts of the District of Columbia, they would necessarily prevent the attaching to the latter courts of jurisdiction and powers of an administrative sort. It is only because the Congress, in establishing the courts of the District of Columbia, is free from the limitations imposed by section 1 of Article III that administrative powers can be, and are, conferred upon them. *Keller* v. *Potomac Electric Company*, 261 U. S. 428, 442, 443; *Postum Cereal Co.* v. *California Fig Nut Co.*, 272 U. S. 693, 700; *Ex parte Bakelite Corporation*, 279 U. S. 438, 450.

With the question of policy, this court is not concerned, save as policy is determined by the Constitution. The question is one of constitutional interpretation which has hitherto been deemed to be settled.